

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent Application of:  
Eddy Jean E. Freyne et al.

Application No.: 10/596,512

Confirmation No.: 7466

Filed: June 15, 2006

Art Unit: 1624

For: PYRIDO-AND PYRIMIDOPYRIMIDINE  
DERIVATIVES AS ANTI-PROLIFERATIVE  
AGENTS

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Examiner: N. E. Jarrell

**APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR  
RECONSIDERATION UNDER 37 CFR §1.705(b)**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

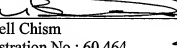
1. This is a request for reconsideration of the patent term adjustment of 222 days indicated in the determination of Patent Term Adjustment under 35 USC 154(b) that was attached to the Notice of Allowance mailed on December 14, 2009 for the above-referenced application. It is respectfully requested that Applicants be granted a minimum patent term adjustment of **531 days**, with an adjustment term based on the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application.
2. This request is being submitted along with the payment of the issue fee.
3. Applicants submit herewith a "Statement Under 37 CFR § 1.702(b)."

Patent Term Adjustment Request dated March 12, 2010

4. In accordance with 37 CFR§ 1.705(b)(1), please charge our Credit Card in the amount of \$200.00 covering the fees set forth in 37 CFR §1.18(e). The U.S. Patent and Trademark Office is authorized to charge any additional fees that may be required in conjunction with this submission to Deposit Account Number 50-2228, under Order No. 026038.0282PTUS, from which the undersigned is authorized to draw.

Dated: March 12, 2010

Respectfully submitted,

By   
B. Dell Chism  
Registration No.: 60,464  
PATTON BOGGS LLP  
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Attorney for Applicant

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Examiner: N. E. Jarrell

**STATEMENT UNDER 37 CFR § 1.702(b)**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

1. This statement is respectfully submitted in support of the “Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR § 1.705(b)” for the above-referenced application. In view of the following, it is respectfully requested that Applicants be granted a minimum patent term adjustment of 531 days, with an adjustment term to be based on the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application.

2. The patent term adjustment on the Determination of Patent Term Adjustment Under 35 U.S.C. §154(b) that was attached to the Notice of Allowance is 222 days (a copy of the PTAS Sheet is submitted herewith as Exhibit A). This determination of 222 days is in error in that

pursuant to 35 U.S.C. §154(b) the Office failed to properly account for the days lost to Patent Office Delays under 37 CFR § 1.702(a)(1), § 1.703(a)(1), § 1.702(a)(2), and § 1.703(a)(2),(3) in conjunction with the Patent Office's delays in issuing a patent within three (3) years of filing the above-referenced application under 37 CFR § 1.702(b) and 1.703(b), as provided in *Wyeth v. Kappos*, \_\_\_ F.3d \_\_\_ (Fed. Cir. 2010).

3. Pursuant to 37 CFR § 1.702, the correct patent term adjustment should be 531 days providing for a June 22, 2010 issuance date. The correct patent term adjustment of 531 days accounts for the delay times for: i) failure to issue a patent within three (3) years of the filing date of June 15, 2006, which totals a delay of 372 days based on a June 22, 2010 issuance date; ii) failure to provide a first action within fourteen (14) months of the 35 USC 371 completion date of June 18, 2006, wherein the first action was not received until February 25, 2008, which totals a delay of 191 days based on the fulfillment of the requirements of 35 USC § 371; and iii) failure to provide a timely response to Applicant's reply filed June 12, 2009, wherein the Patent Office did not respond until December 14, 2009, which totals a delay of 63 days. The correct patent term adjustment of 531 accounts for Applicant delays under 37 CFR § 1.704(b), wherein Applicants were debited a total of 32 days for failing to respond to the August 20, 2008 office action until December 22, 2008. The correct patent term adjustment accounts for a total of 63 days of overlap regarding the differences between patent term extension periods under 37 CFR § 1.702(b), 1.703(b) and all other section of Code regarding Patent Office Delays, which is set forth under 37 CFR § 1.703(f) regarding calculation of correct patent term adjustments.

4. The above-referenced application is not subject to any terminal disclaimers.

5. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 CFR § 1.704 beyond that discussed *supra*, regarding Applicants 32 days of delay for failing to respond to the August 20, 2008 office action until December 22, 2008.


6. As set forth in 37 CFR §1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of examination delays reduced by the period of Applicant Delay and examination delay overlap days. Therefore, Applicants submit that the correct patent term adjustment for the above-referenced application is **at least 531 days**, which is the difference between the total period of examination delay (626 days) and the period of Applicant Delay (32 days) and the period of examination delay overlap days (63 days). Applicants further submit that the term of 531 days should be adjusted by a term equal to the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application in accordance with 37 CFR §1.703(b). **As such, the correct patent term adjustment upon issuance of a patent is expected to be the sum of 531 days (as calculated herein) and adjusted for the number of days from March 15, 2010 to issuance of a patent.**

7. In accordance with 37 CFR§ 1.705(b)(2)(iii), Applicants submit that the pending patent corresponding to this application will not be subject to a terminal disclaimer.

In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a minimum patent term adjustment of 531 days, with an adjustment to be based on the number of days following payment of the issue fee on March 15, 2010 to the date of issuance of a patent for the above-referenced application.

Dated: March 12, 2010

Respectfully submitted,

By   
B. Dell Chism  
Registration No.: 60,464  
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McLean, Virginia 22102  
(703) 744-8063  
(703) 744-8001 (Fax)  
Attorney for Applicant

ATTACHMENTS:

- (a) Determination of Patent Term Adjustment under 35 U.S.C. §154(b)

|            |  |                     |
|------------|--|---------------------|
| 10/596,512 | PYRIDO-AND PYRIMIDOPYRIMIDINE DERIVATIVES AS ANTI-PROLIFERATIVE AGENTS | 03-11-2010:09:23:30 |
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/596,512

|                              |            |                                      |     |
|------------------------------|------------|--------------------------------------|-----|
| Filing or 371(c) Date:       | 06-15-2006 | USPTO Delay (PTO) Delay (days):      | -   |
| Issue Date of Patent:        | -          | Three Years:                         | -   |
| Pre-Issue Petitions (days):  | -          | Applicant Delay (APPL) Delay (days): | -   |
| Post-Issue Petitions (days): | -          | Total PTA (days):                    | 222 |
| USPTO Adjustment(days):      | -          | Explanation Of Calculations          |     |

### Patent Term Adjustment History

| Date       | Contents Description                            | PTO(Days) | APPL(Days) |
|------------|---|-----------|------------|
| 12-14-2009 | Mail Notice of Allowance                        | 63        |            |
| 12-07-2009 | Document Verification                           | ⬆         |            |
| 12-07-2009 | Notice of Allowance Data Verification Completed | ⬆         |            |
| 12-07-2009 | Case Docketed to Examiner in GAU                | ⬆         |            |
| 12-07-2009 | Examiner's Amendment Communication              | ⬆         |            |
| 11-20-2009 | Examiner Interview Summary Record (PTOL - 413)  | ⬆         |            |
| 11-09-2009 | Date Forwarded to Examiner                      | ⬆         |            |
| 06-12-2009 | Response to Election / Restriction Filed        | ⬆         |            |
| 06-12-2009 | Request for Extension of Time - Granted         |           |            |
| 04-03-2009 | Mail Restriction Requirement                    |           |            |
| 03-30-2009 | Requirement for Restriction / Election          |           |            |
| 01-16-2009 | Date Forwarded to Examiner                      |           |            |
| 12-22-2008 | Response to Election / Restriction Filed        |           | 32         |
| 12-22-2008 | Request for Extension of Time - Granted         |           | ⬆          |
| 08-20-2008 | Mail Restriction Requirement                    |           | ⬆          |
| 08-18-2008 | Requirement for Restriction / Election          |           |            |
| 06-19-2008 | Date Forwarded to Examiner                      |           |            |
| 05-21-2008 | Response to Election / Restriction Filed        |           |            |
| 05-21-2008 | Request for Extension of Time - Granted         |           |            |
| 02-25-2008 | Mail Restriction Requirement                    | 191       |            |
| 02-19-2008 | Requirement for Restriction / Election          | ⬆         |            |
| 11-02-2006 | Information Disclosure Statement considered     | ⬆         |            |
| 07-21-2007 | Case Docketed to Examiner in GAU                | ⬆         |            |
| 07-21-2007 | IFW TSS Processing by Tech Center Complete      | ⬆         |            |
| 11-02-2006 | Information Disclosure Statement (IDS) Filed    | ⬆         |            |
| 11-02-2006 | Information Disclosure Statement (IDS) Filed    | ⬆         |            |
| 04-05-2007 | PG-Pub Issue Notification                       | ⬆         |            |
| 06-18-2006 | 371 Completion Date                             | ⬆         |            |
| 12-26-2006 | Application Return from OIPE                    |           |            |
| 12-26-2006 | Application Return TO OIPE                      |           |            |
| 06-18-2006 | 371 Completion Date                             |           |            |
| 12-26-2006 | Application Return from OIPE                    |           |            |
| 12-26-2006 | Application Return TO OIPE                      |           |            |
| 06-18-2006 | 371 Completion Date                             |           |            |

12-26-2006

Application Dispatched from OIPE

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